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April 9, 2025

VIA ECF

Hon. Jesse M. Furman
United States District Court for the Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Frommer et al. v. MoneyLion Techs. Inc. et al.*, No. 1:23-cv-06339-JMF

Dear Judge Furman:

The parties submit this letter jointly in response to the Court's requests during last week's trial proceedings for documents and information relating to MoneyLion's valuation of the 2021 and 2022 Earnouts as contingent consideration in its Form 10-K and 10-Q filings.

Enclosed please find the following documents responsive to the Court's request: (1) MoneyLion's Form 10-Q for the quarterly period ended March 31, 2022 filed on May 16, 2022 ("Q1 2022 10-Q"); (2) MoneyLion's Form 10-Q for the quarterly period ended June 30, 2022 filed on August 11, 2022 ("Q2 2022 10-Q"); (3) MoneyLion's Form 10-Q for the quarterly period ended September 30, 2022 filed on November 10, 2022 ("Q3 2022 10-Q"); (4) MoneyLion's Form 10-K for the fiscal year ended December 31, 2022 filed on March 16, 2023 ("2022 10-K," (which is in evidence as PX283); and (5) MoneyLion's Form 10-Q for the quarterly period ended March 31, 2023 filed on May 9, 2023 ("Q1 2023 10-Q").¹

The relevant excerpts are included below for the Court's convenience, and valuations and are reported in thousands, such that a reference to \$1,000 should be read as \$1,000,000. By way of explanation, the Q1 2022 10-Q reported the value of the 2021 and 2022 Earnouts in aggregate as of the date of the acquisition, and the aggregate value was reported as \$11.782 million. Starting in the Q2 2022 10-Q, the public filings reported the aggregate value of the 2021 and 2022 Earnouts together with the value of the make-whole shares in respect of the \$30 million stock portion of the closing payment (referred to interchangeably in the filings as the "Make-Whole Provision" or "Closing Make-Whole Provision").² As noted in the public filings, the final shares under the

¹ Subsequent 10-K and 10-Q filings include references to the valuations reported in the Q1 2023 10-Q. If it would be helpful to the Court, the parties would be happy to submit copies of those filings.

² The Make-Whole Provision refers to "the initial shares issued pursuant to which the Company was and may be required to issue additional restricted shares of MoneyLion Class A Common Stock or pay additional cash, as determined by the Company in its sole discretion, on each of December 31, 2021, March

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Closing Make-Whole Provision were issued on September 30, 2022 and therefore no liability was outstanding in respect of the Closing Make-Whole Provision as of September 30, 2022.

The relevant excerpts are as follows:

- Q1 2022 10-Q, at p. 25: “The sellers may earn up to an additional \$35 million payable in restricted shares of MoneyLion Class A Common Stock if MALKA’s revenue and EBITDA exceeds certain targets in 2021 and 2022. The \$35 million payable in restricted shares based on 2021 and 2022 operating performance was valued at \$11,782 as of the MALKA Acquisition. The payable in restricted shares based on 2021 and 2022 operating performance was valued at \$12,922 and \$18,011 as of March 31, 2022 and December 31, 2021, respectively, and was included in other liabilities on the consolidated balance sheets. The \$406 change in fair value for the three months ended March 31, 2022 was included on the consolidated statement of operations as a component of the change in fair value of contingent consideration from mergers and acquisitions.”
- Q2 2022 10-Q, at p. 27: “The sellers may also earn up to an additional \$35 million payable in restricted shares of MoneyLion Class A Common Stock if MALKA’s revenue and EBITDA exceeds certain targets in 2021 and 2022. The \$35 million payable in earnout restricted shares based on 2021 and 2022 operating performance was valued at \$11,782 as of the MALKA Acquisition. The payable in restricted shares based on 2021 and 2022 operating performance and the Make-Whole Provision were valued at \$23,721 and \$29,561 as of June 30, 2022 and December 31, 2021, respectively, and was included in other liabilities on the consolidated balance sheets. The \$7,485 and \$11,057 increase in fair value for the three and six months ended June 30, 2022, respectively, was included on the consolidated statement of operations as a component of the change in fair value of contingent consideration from mergers and acquisitions.”
- Q3 2022 10-Q, at p. 29: “The sellers may also earn up to an additional \$35 million payable in restricted shares of MoneyLion Class A Common Stock if MALKA’s revenue and EBITDA exceeds certain targets in 2021 and 2022. The \$35 million payable in earnout restricted shares based on 2021 and 2022 operating performance was valued at \$11,782 as of the MALKA Acquisition. The restricted shares payable based on 2021 and 2022 operating performance and the Closing Make-Whole Provision were valued at \$22,728 and \$29,561 as of September 30, 2022 and December 31, 2021, respectively, and was included in other liabilities on the consolidated balance sheets. The final shares under the Closing Make-Whole Provision were issued on September 30, 2022 and therefore no liability was

31, 2022, June 30, 2022 and September 30, 2022” and “was valued at \$10,870 as of the MALKA Acquisition Closing Date.” Q2 2022 10-Q at p. 27.

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outstanding as of September 30, 2022 related to the Closing Make-Whole Provision. The \$4,360 and \$15,417 increase in fair value for the three and nine months ended September 30, 2022, respectively, was included on the consolidated statement of operations as a component of the change in fair value of contingent consideration from mergers and acquisitions.”

- 2022 10-K (PX283), at F-43 (p. 134 of the exhibit): “The Membership Interest Purchase Agreement governing the MALKA Acquisition also includes certain earnout provisions and related make-whole provisions based on MALKA revenue and EBITDA targets in 2021 and 2022 entitling the Sellers to earn up to an additional \$35.0 million payable in restricted shares of Class A Common Stock. The \$35 million payable in earnout restricted shares based on 2021 and 2022 operating performance was valued at \$11,782 as of the closing of the MALKA Acquisition. The restricted shares payable based on 2021 and 2022 operating performance and the Closing Make-Whole Provision were valued at \$2,444 and \$29,561 as of December 31, 2022 and December 31, 2021, respectively, and were included in other liabilities on the consolidated balance sheets. The final shares under the Closing Make-Whole Provision were issued on September 30, 2022 and therefore no liability was outstanding as of December 31, 2022 related to the Closing Make-Whole Provision. The \$4,867 decrease and \$10,838 increase in fair value for the twelve months ended December 31, 2022 and 2021, respectively, was included on the consolidated statement of operations as a component of the change in fair value of contingent consideration from mergers and acquisitions.”
- Q1 2023 10-Q, at p. 23: “The sellers may earn up to an additional \$35 million payable in restricted shares of Class A Common Stock if MALKA’s revenue and EBITDA exceeds certain targets in 2021 and 2022. Any portion of the earnout paid in restricted shares is subject to a make-whole provision pursuant to which the Company was and may be required to issue additional restricted shares of Class A Common Stock or pay additional cash, as determined by the Company in its sole discretion. The unsettled restricted shares payable based on operating performance and the Closing Make-Whole Provision were valued at \$2,444 as of December 31, 2022 and were settled as of March 31, 2023. The \$180 decline and \$4,292 increase in fair value for the three months ended March 31, 2023 and 2022, respectively, was included on the consolidated statement of operations as a component of the change in fair value of contingent consideration from mergers and acquisitions. The restricted shares payable based on 2021 and 2022 operating performance were valued based on the Class A Common Stock price per share as of December 31, 2022.”

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Respectfully submitted,

/s/ *Eliot Lauer*

Eliot Lauer (for Plaintiffs)

/s/ *Edward Moss*

Edward Moss (for Defendants)

cc: All counsel of record